

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) CASE NO: 05-55354
Alicia Dionne Barclay) Chapter 13
)
)
)
Debtor(s).) Judge Marilyn Shea-Stonum
)
DEBTOR'S RESPONSE TO
MOTION OF CHAPTER 13
TRUSTEE TO DISMISS
CASE AND TO VACATE
PARTER ORDER GRANTING
CHAPTER 13 TRUSTEE'S
MOTION

HEARING REQUESTED

Now comes the above-captioned debtor, by and through the undersigned counsel, who prays for the entry of an order vacating the *ex parte* order entered herein wherein the Court conditionally granted a motion of the chapter 13 trustee to dismiss the debtor's chapter 13 case. The debtor states the following:

1. On December 9, 2005, the Court entered a conditional order, upon a previously unserved motion of the chapter 13 trustee, and without previous notice or hearing, wherein the Court conditionally dismissed the debtor's case "unless all information requested by the Trustee is provided to the Trustee within thirty (30) days of the Motion, or unless the debtor(s) request a hearing on this matter that specifically sets forth the basis for the hearing. . . ."
 2. The "information" sought by the chapter 13 trustee, according to the unserved motion, was an "amended schedule J to reduce charitable contributions."
 3. The debtor previously has provided to the chapter 13 trustee information requested by the chapter 13 trustee concerning the amount of the debtor's past charitable giving. A copy of the information provided to the chapter 13 trustee is attached hereto as Exhibit "A." While the debtor has not been able to provide written proof that she has made charitable contributions

in the recent past to the extent that the debtor indicates in her schedule J, the debtor plans to make such charitable contributions going forward and will provide the chapter 13 trustee with proof of future contributions to the extent directed by the Court

4. The chapter 13 trustee has failed to object to confirmation of the debtor's chapter 13 plan and is attempting to use an *ex parte* procedure to avoid his obligation to object to confirmation of the plan and thus the chapter 13 trustee is attempting to short-circuit the due process assurances of normal plan confirmation procedure. The debtor states that as the charitable contributions set forth by her in her previously-filed schedule J do not exceed 15% of her gross income, any objection by the chapter 13 trustee to the effect that the debtor is not proposing to pay into her plan all of her disposable income as defined by 11 U.S.C. Sec. 1325(b)(2)(A) could not be sustained by the Court.

5. The Court should not permit the chapter 13 trustee to use an *ex parte* process to subvert Congress's clear intent to allow the debtor to make charitable contributions of up to 15% of her gross income while she is in a chapter 13 case. *See*, The Religious Liberty and Charitable Contribution Protection Act, Pub. L. No. 105-183, 112 Stat. 517 (1998).

WHEREFORE, the debtor prays that the chapter 13 trustee's motion be overruled and denied and that the ex parte order granting it be vacated. The debtor further prays for such other and further relief as may be equitable and just.

Respectfully Submitted,

/s/ Robert M. Whittington, Jr.

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent by ordinary U.S. Mail, postage prepaid, on December 13, 2005 to those parties whose names and complete addresses appear below.

/s/ Robert M. Whittington, Jr.

Jerome L. Holub, Chapter 13 Trustee
I Cascade Plaza, 20th Floor
Akron, OH 44308

U.S. Trustee
201 Superior Ave. E. #441
Cleveland, OH 44114

THE FIRST APOSTOLIC FAITH CHURCH
790 Easter Ave
Akron, Oh 44307

Pastor:
Suffragan Bishop Samuel L. Hampton I.



P 01/01
05-55354

Personal Contribution

Alicia Barkely
1075 LaCroix Ave
Akron, OH 44307

Report Period 2005
Starts 01/01/2005
Ends 12/31/2005

*Give and it shall be given to you, good
measure pressed down and shaken together,
and running over.* Luke 6:38a

Contribution Amount: \$ 693.73. According to the First Apostolic Faith Church Record, this is your total contribution for year 2005. Thank you for your financial support for you have truly been a blessing from God.

Pastor: Samuel L. Hampton Date: 11/02/2005
Suffragan Bishop Samuel L. Hampton Sr.

Treasurer: Oran N. Lincoln Date: 11/02/2005
Deacon Oran N. Lincoln



Record to file (12/13/05) or 2005.

*** TOTAL PAGE.01 ***